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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 ABEL ROBINSON,

11 Plaintiff,

12 v.

13 JACKSON, et al.,

14 Defendants.

CASE NO. 3:17-CV-05794-RJB-DWC

ORDER

15 The District Court referred this action, filed pursuant to 42 U.S.C. § 1983, to United
16 States Magistrate Judge David W. Christel. On November 8, 2017, Plaintiff Abel Robinson filed
17 a “Motion to Voluntarily Dismiss Complaint/Civil Suit with Jury Trial Demand” (“Motion to
18 Dismiss”), wherein Plaintiff requested his case be dismissed. Dkt. 11. Then, on November 15,
19 2017, Plaintiff filed a Second Amended Complaint. Dkt. 12. Before the Second Amended
20 Complaint was docketed, the undersigned entered a Report and Recommendation (“R&R”)
21 recommending Plaintiff’s Motion to Dismiss be granted. Dkt. 13. On December 11, 2017, the
22 Honorable Robert J. Bryan, the District Judge assigned to this case, declined to adopt the R&R
23 because it appeared Plaintiff was attempting to proceed with this case. Dkt. 15.
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1 As Plaintiff filed both a Motion to Dismiss and a Second Amended Complaint, the Court
2 directed Plaintiff to show cause on or before January 15, 2018 regarding whether he wished to
3 proceed with this lawsuit. On December 26, 2017, Plaintiff filed a Response to Show Cause
4 Order (“Response”) stating that he wishes to proceed with this lawsuit. Dkt. 17. In the Response,
5 Plaintiff also stated he incorrectly filed the Second Amended Complaint in this case; he intended
6 the Second Amended Complaint to be filed as a new case because the Second Amended
7 Complaint raises a different issue, arising from a different situation. *Id.* Plaintiff also requests a
8 copy of the Motion to Dismiss and requests Court-appointed counsel. *Id.*

9 **I. Directions to Plaintiff to File Amended Complaint**

10 Based on Plaintiff’s Response, the Court finds this case should proceed. The Court also
11 finds the Second Amended Complaint should be stricken from this case. Therefore, the Court
12 orders the following: Plaintiff is directed to file an amended complaint in this case, Robinson v.
13 Jackson, et al., 3:17-CV-5794. Plaintiff’s amended complaint must correct the deficiencies
14 identified in the Court’s November 6, 2017 Order. *See* Dkt. 9. If Plaintiff fails to file an amended
15 complaint in this case on or before February 9, 2018, the Court will recommend dismissal of this
16 action.

17 **II. Request for Counsel**

18 In the Response, Plaintiff provides a single sentence requesting the Court provide him
19 with counsel. Dkt. 17, p. 2. No constitutional right to appointed counsel exists in a § 1983 action.
20 *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in*
21 *U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
22 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may
23 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
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1 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
2 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the
3 Court must evaluate both “the likelihood of success on the merits [and] the ability of the
4 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”
5 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718
6 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp
7 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of
8 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

9 Plaintiff has not shown, nor does the Court find, this case involves complex facts or law.
10 Plaintiff has also not shown an inability to articulate the factual basis of his claims in a fashion
11 understandable to the Court. At this time, the Court has found Plaintiff failed to state a claim in
12 his First Amended Complaint and has directed Plaintiff to file an amended complaint. Therefore,
13 Plaintiff has also not shown he is likely to succeed on the merits of this case.

14 For the above stated reasons, the Court finds Plaintiff has failed to show the appointment
15 of counsel is appropriate at this time. Accordingly, Plaintiff’s request is denied without
16 prejudice.

17 **III. Directions to the Clerk**

18 Based on the Court’s above findings, the Clerk is directed to:

- 19 • Strike the Second Amended Complaint from the docket, watermark the Second
20 Amended Complaint in this case, and open a new case with the Second Amended
21 Complaint as the operative complaint; and
- 22 • Send Plaintiff a copy of this Order, the Order Granting Motion to Amend and
23 Directing Plaintiff to File an Amended Complaint (Dkt. 9), the Motion to Dismiss
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(Dkt. 11), and the appropriate forms for filing a 42 U.S.C. § 1983 civil rights
complaint and for service.

Dated this 5th day of January, 2018.

A handwritten signature in black ink, appearing to read "D. W. Christel", written over a horizontal line.

David W. Christel
United States Magistrate Judge